

ORDER PURSUANT TO THE DECLARATION OF DISASTER AND EMERGENCY

BOROUGH OF BEACH HAVEN EO-2020-4

TO ALL RESIDENTS AND PERSONS WITHIN THE MUNICIPALITY OF THE BOROUGH OF BEACH HAVEN IN THE COUNTY OF OCEAN AND STATE OF NEW JERSEY AND TO ALL DEPARTMENTS OF THE MUNICIPAL GOVERNMENT OF THE BOROUGH OF BEACH HAVEN

WHEREAS, in or about December of 2019, the emergence of the novel Coronavirus Disease (Covid-19), caused by the SARS-CoV-2 virus ("Coronavirus"), was discovered in Wuhan, Hubei Province, People's Republic of China, and was recognized to be a severe, potentially fatal, highly infectious respiratory illness that was suspected of human-to-human transmission; and

WHEREAS, on January 30, 2020, the World Health Organization declared the outbreak of Covid-19 to be a Public Health Emergency of International Concern as human-to-human transmission of the Coronavirus was confirmed, and outbreaks of the Coronavirus began to spread to numerous other countries throughout the world; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared Covid-19 to be a United States Public Health Emergency

WHEREAS, on February 3, 2020, Governor Philip D. Murphy issued Executive Order 102 establishing the New Jersey Coronavirus Task Force in an effort to monitor the spread of the Coronavirus within the State of New Jersey, the United States of America, and the entire world in order to facilitate necessary and appropriate action to ensure the safety and security of the residents of the State of New Jersey; and

WHEREAS, on March 4, 2020, the State of New Jersey reported the first confirmed positive case of Coronavirus in this State; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103 declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the Covid-19 within the State of New Jersey; and

WHEREAS, on March 13, 2020, the President of the United States formally declared the outbreak of Coronavirus to constitute a National Emergency pursuant to the National Emergencies Act, 50 U.S.C. § 1601, et seq; and

WHEREAS, on March 16, 2020, Governor Murphy issued Executive Order 104 enacting several "social distancing" regulations, including but not limited to, limiting public gatherings to no more 50 people, closing educational facilities, closing various recreation and entertainment based businesses, imposed restrictions on scope of service and hours of operation for other non-essential retail, recreational, restaurant/bars and entertainment businesses; and

WHEREAS, on March 21, 2020, Governor Murphy issued Executive Order 107 which expanded the social distancing regulations set forth in Executive Order 104, including but not limited to, directing all New Jersey residents to remain in their home or place of residence with specific limited exceptions, prohibited gatherings of any size, closed all non-essential retail businesses and identified essential businesses permitted to continue to operate subject to specific limitations, and reiterated and strengthened social distancing requirements when in public; and

WHEREAS, on March 21, 2020, Governor Murphy also issued Executive Order 108 which specifically voided and precluded County and Municipal Governments from imposing or enforcing any restrictions/regulations that in any way would or might conflict with any of the provisions of Executive Order 107, with the exception of regulating online marketplaces for arranging or offering lodging, municipal or county parks, and beaches and boardwalks; and

WHEREAS, Executive Order 107 specifically regulates the continued operation of Bars/Restaurants and provides, in part, that "All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited

to offering only food delivery and/or take-out services in accordance with their existing liquor licenses;" and

WHEREAS, in the anticipation that the regulations, prohibitions, and social distancing requirements within the Governor's Executive Orders may be relaxed and/or modified in the coming weeks or months, potentially permitting these establishments to operate at reduced capacities and/or with social distancing requirements, the Borough of Beach Haven finds it to be appropriate to temporarily relax the procedures associated with site plan review and approval in order to permit said establishments to locate tables outdoors, in the Borough pedestrian right-of-way and/or in other locations on site, subject to the requirements and restrictions set forth herein, until further Order of the Borough, the following emergency restrictions and regulations are effective immediately, but remain subject to any Executive Order of the Governor, including the relaxation of prior orders and/or subsequent orders; and

WHEREAS, to the extent that the Borough finds it appropriate to temporarily relax procedures associated with site plan review and approval in order to exercise appropriate social distancing during the state of emergency while enabling full-service restaurants to operate and locate tables outdoors, in the Borough's pedestrian right-of-way and/or in other locations on site. For purposes of this order, "full-service restaurants" shall mean restaurants approved for interior seating and in-person dining and shall not include restaurants that are takeout only and have not received approval for indoor seating. Take out establishments shall not be permitted to seek the outdoor seating areas authorized by this Order.

NOW, THEREFORE, IT IS ON THIS 28TH DAY OF APRIL, 2020, HEREBY ORDERED, by the Mayor and Emergency Management Coordinator of the Borough of Beach Haven, County of Ocean, State of New Jersey as follows:

1. The precatory phrases above are specifically incorporated herein by reference and are made a part hereof as if each and every statement were set forth fully herein.

2. Effective immediately, and contingent upon the State of New Jersey relaxing the provisions of Executive Order 107, specifically the provisions pertaining to the operation of restaurants in relation to social distancing requirements, the Borough of Beach Haven is hereby granted the authority and discretion to approve site plan applications pertaining to existing full-service restaurants in order to permit said establishments to relocate existing tables/seating to the Borough pedestrian right-of-way and/or other locations on site, subject to the following requirements and restrictions. All applications shall be subject to approval of the Borough Manager, Chief of Police, Construction Department, and Health Department, in their sole discretion, all individuals having to agree. The Borough's discretion over location, scope, setbacks and size of outdoor seating areas and related structures is absolute and the Borough may condition approval based upon such requirements as any other consideration, including, but not limited to, applicable federal, state or local executive and emergency orders, parking requirements, pedestrian safety, neighborhood concerns and the public health, welfare and safety.

a. Individual full-service restaurants seeking approval to relocate existing tables/seating to the Borough's pedestrian right-of-way and/or other locations on site, shall be required to submit a site plan application, and a plan depicting the existing and proposed layout and location of tables/seating inside and outside of said restaurant, which shall also include but not be limited to, confirmation of the number of existing, approved tables/seats, a depiction of all aisles, routes of ingress and egress, clearances/distances between tables and between the seating area and the curb line, the location of all food service areas, an illustration, rendering, and/or photograph of all proposed furniture, umbrellas, trash receptacles and any proposed structures to protect the outdoor seating area from the elements. Proposed tables/chairs, furniture, umbrellas, trash receptables, etc. must be of like nature and appearance to what is currently utilized on site. Applicants shall also submit a brief written narrative describing the proposed method of serving food and beverages in the newly proposed areas. Applications shall be available in the Municipal Clerk's Office or online at the Borough's website. The approval of any temporary site plan in relation to this Order shall be subject to the following conditions:

i. Applicants will be permitted to relocate existing approved tables/seats to other locations on site, including the Borough's pedestrian right-of-way, subject to the review and approval of the Borough Manager, Chief of Police, Construction Department and

Health Department. Notwithstanding the provisions of this Order, no tables/seats shall obstruct the free flow of pedestrian traffic or any of its approaches.

ii. No increase in the number of tables/seats will be permitted, and applicants will not be permitted to exceed the number of previously approved tables/seats. The maximum occupancy of a restaurant may be revised at the Borough's discretion in order to ensure that all restaurants comply with the CDC and State recommended/ordered social distancing guidelines.

iii. In addition to the creation and/or expansion of the outdoor seating areas, restaurants shall be permitted to apply to install temporary awnings, tents, pergola and other structures authorized by the Borough to protect the outdoor seating area from the elements.

iv. Tables/seats shall be permitted to be located in the Borough's pedestrian right-of-way provided a minimum 5ft. pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements.

v. Any approved tables/seats located in an outdoor dining area are permitted to be utilized between the hours of 7:00 a.m. and 10:00 p.m. on Sunday through Thursday, and until 11:00 p.m. on Friday and Saturday. Tables/seats approved to be located within the Borough right-of-way must be removed from the right-of-way and stored on site on a daily basis. Tables/seats approved to be located on site, in areas privately-owned, shall be permitted to remain in said locations.

vi. Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor dining area, and the frequency with which the outdoor dining area will be policed for litter in order to control the accumulation of trash/recycling.

vii. The sale/service of alcoholic beverages in these locations shall be permitted, subject to compliance with any and all applicable ABC regulations/statutes, including but not limited to a temporary extension of premises application, and subject to the review and approval of the Borough Clerk and Chief of Police. The approval of any temporary extension of premises application to permit the sale/consumption of alcoholic beverages in outdoor dining areas shall be temporary and shall automatically terminate upon the State of New Jersey rescinding Executive Order 107 and/or the elimination of all social distancing regulations.

viii. Applicants proposing to relocate existing tables/seats to the Borough's pedestrian right-of-way shall indemnify and hold harmless the Borough of Beach Haven, its employees, agents, and/or officers from all claims, losses, liens, expenses, suits and attorney's fees arising out of the placement, operation, and maintenance of the Outdoor Dining Area. Applicants must name the Borough of Beach Haven as an additional insured under the Applicant's general liability insurance, bodily injury, property damage, and personal injury insurance policies, required to have a minimum limit of one million (\$1,000,000.00) Dollars, and provide proof of same to the Zoning Officer, and proof that said policies have been amended to reflect coverage for the proposed outdoor dining area.

3. The Borough of Beach Haven reserves the right to amend, terminate, or repeal this Order at any time, and accordingly no property rights are granted to any person(s) or entities by virtue of this Order. **All person(s) and/or entities electing to pursue temporary relief in accordance with the provisions of this Order are hereby given notice that the expenditure of any funds, or the incurrence of any costs, in reliance upon the provisions of this resolution shall be at their sole and exclusive expense.** All persons and/or entities are hereby given notice that the risk of loss for any expenditure and/or costs incurred shall be their sole and exclusive responsibility.

4. With the exception of the temporary relief set forth herein, Applicant's must comply with any and all other federal, state, county, and local laws and regulations, including any and all other existing zoning ordinances and/or general ordinances governing the operation of restaurants

5. In the event the Beach Haven Police Department or Code Enforcement Officer

determines that an Applicant is in violation of the conditions of any temporary site plan approved in relation to this Order, each specific violation of this Order and each day that such violation continues shall be considered a separate violation, the owners of said restaurants shall be subject to potential multiple violations during the course of each day, and each day in violation shall be considered a separate violation. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50, the Borough Code and the temporary relief granted herein to restaurants may be revised or revoked by the Borough.

6. This Resolution shall take effect immediately, but remains subject to relaxation of the provisions of Executive Order 107, including, but not limited to the provisions pertaining to the operation of restaurants in relation to social distancing requirements, and subject to any subsequent social distancing requirements imposed by Executive Order of the Governor. In the event Executive Order 107 is rescinded with no subsequent executive order, or should social distancing requirements be eliminated, any temporary approval afforded by the Borough in accordance with the terms and conditions of this Order shall be deemed void, and Applicants shall be required to immediately return tables/seats to their previously approved locations.

7. By this Order the Borough of Beach Haven requests that the Director of the New Jersey Division of Alcoholic Beverage Control exercise the authority conferred upon the Director by the provisions of N.J.A.C. 13:2-5.5 and N.J.A.C. 13:2-9.1 to immediately implement procedures whereby liquor licensees may obtain permits providing for the temporary extension of licensed premises to the outdoors table areas that are approved pursuant to the provisions of this Resolution for so long as such municipal approval is valid without the necessity of having to file a formal place-to-place (expansion of licensed premises) application with the local alcoholic beverage control board.

8. Unless otherwise expressly provided by the Order, all terms and requirements of the Borough Code shall continue to apply to the restaurants and the proposed structures, included, but limited to, construction permits for the installation of any proposed structures at the restaurant property. The Borough shall have absolute discretion to amend any approval, condition and restriction set forth in this Order.

9. This Declaration and Order shall remain in effect until subsequent Order of the Borough.



William Tromm
Emergency Management Coordinator

Dated: 4/28/20



Nancy T. Davis
Mayor

Dated: 4/28/2020

BEACH HAVEN BOROUGH
TEMPORARY SITE PLAN APPLICATION FOR OUTDOOR SEATING
Pursuant to Executive Order #2020-04

Available to full-service restaurants currently approved for interior seating and in-person dining.
Requests may include relocating existing tables/seats to the Borough pedestrian right-of-way
and/or other locations within the property line, including parking areas.

APPLICANT BUSINESS NAME _____

CONTACT PERSON _____

CONTACT PHONE # _____ CONTACT EMAIL _____

BUSINESS OPERATING ADDRESS _____

CURRENT APPROVED # OF SEATS: INSIDE _____ OUTDOORS _____

Written description of requested outdoor seating and proposed method of serving food and
beverage to the area:

1. Attach a plan (illustration or photo) showing the following:

- Proposed layout/location of tables/seats inside and outside _____
- Proposed aisles, routes of ingress and egress _____
- Clearance between tables _____
- Clearance between seating areas and the curb line
(5' minimum pedestrian clearance is required) _____
- Location and purpose of food service areas _____
- Any proposed structures to protect the outdoor seating area
(construction permits may be required) _____

Also submit:

2. **Rendering or photos of proposed furniture** _____
 (must be of like nature and appearance to what is currently utilized on site)

3. **Litter Control Plan** _____
Litter Control Plan shall include a description of the number and location of trash receptacles proposed to service the outdoor dining area, and the frequency with which the outdoor dining area will be policed for litter in order to control the accumulation of trash/recycling.

4. Executed **Hold Harmless Indemnification** Agreement _____

5. **Certificate of Liability Insurance** naming the Borough of Beach Haven as an additional insured with a minimum limit of one million (\$1,000,000.00) Dollars, and provide proof that said policies have been amended to reflect coverage for the proposed outdoor dining area. _____

6. *(Liquor License holders)* Proof of application to the Department of ABC _____
 for approval, including but limited to, temporary expansion of premise permit.

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- No tables/seats shall obstruct the free flow of pedestrian traffic or any of its approaches.
 - No increase in the number of tables/seats will be permitted.
 - Restaurants shall be permitted to apply to install temporary awnings, tents, pergola and other structures authorized by the Borough to protect the outdoor seating area.
 - Approved areas are permitted to be utilized between the hours of 7:00 a.m. and 10:00 p.m. on Sunday through Thursday, and until 11:00 p.m. on Friday and Saturday.
 - Tables/seats approved to be located within the Borough pedestrian right-of-way must be removed from the right-of-way and stored on site on a daily basis.
 - Approval of any temporary extension of premises application to permit the sale/consumption of alcoholic beverages in outdoor dining areas shall be temporary and shall automatically terminate upon the State of New Jersey rescinding Executive Order 107 and/or the elimination of all social distancing regulations.
 - Each specific violation of this approval shall be considered a separate violation, the owners of said restaurants shall be subject to potential multiple violations during the course of each day, and each day in violation shall be considered a separate violation.
 - In the event Executive Order 107 is rescinded, or should social distancing requirements be eliminated, any temporary approval afforded by the Borough in accordance with the terms and conditions of this Order shall be deemed void, and Applicants shall be required to immediately return tables/seats to their previously approved locations.

The Borough of Beach Haven reserves the right to amend, terminate, or repeal this approval, and accordingly no property rights are granted to any person(s) or entities by virtue of this approval. With the exception of the temporary relief set forth herein, Applicant's must comply with any and all other federal, state, county, and local laws and regulations, including any and all other existing zoning ordinances and/or general ordinances governing the operation of restaurants

Authorized Signatory for the Applicant

Date

FOR OFFICE USE ONLY

Sherry Mason, Borough Manager

Date

Comments: _____

James Markoski, Chief of Police

Date

Comments: _____

Beach Haven Construction Department

Date

Comments: _____

LBI Heath Department

Date

Comments: _____
